IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN
AT JAIPUR BENCH, JAIPUR.

O R D E R

1) S.B. CIVIL WRIT PETITION NO.8100/07
M/s.Dhan Laxmi Enterprises Pvt. Vs. State & ors.

2) S.B. CIVIL WRIT PETITION NO.5905/07
M/s.Kalyan Traders Vs. State and ors.

3) S.B. CIVIL WRIT PETITION NO.5916/07
M/s.Badri Narain Madho Lal & Co. Vs. State & ors.

4) S.B. CIVIL WRIT PETITION NO.6108/07
M/s.Jugal Kishore Sanjay Kumar Vs. State & ors.

5) S.B. CIVIL WRIT PETITION NO.7029/07
M/s.Gulabchand Sobhagmal Vs. State and ors.

6) SBCWP NO.7028/07
M/s.Shri Ram Enterprises Vs. State and ors.

7) S.B. CIVIL WRIT PETITION NO.7030/07
M/s.Airan Trading Company Vs. State and ors.

8) S.B. CIVIL WRIT PETITION NO.7650/07
M/s.Yogendra Trading Company Vs. State and ors.

9) S.B. CIVIL WRIT PETITION NO.6568/07
M/s.Shri Shyam Pulses (P) Ltd. Vs. State & ors.

10) S.B. CIVIL WRIT PETITION NO.6569/07
M/s.R.K. Industries Vs. State and ors.

11) S.B. CIVIL WRIT PETITION NO.7509/07
M/s.S.R. Traders Vs. State and ors.

12) S.B. CIVIL WRIT PETITION NO.7584/07
M/s.G.K. Industries Vs. State and ors.

13) S.B. CIVIL WRIT PETITION NO.7585/07
M/s.Mangal Traders Vs. State and ors.

14) S.B. CIVIL WRIT PETITION NO.7583/07
M/s.Ashok & Co. Rice Mills Vs. State and ors.

15) S.B. CIVIL WRIT PETITION NO.6578/07
M/s.Ritesh Kumar & Co. Vs. State and ors.

16) S.B. CIVIL WRIT PETITION NO.7671/07
M/s.G.K. Dairy Vs. State and ors.

17) S.B. CIVIL WRIT PETITION NO.7667/07
M/s.Trade House Vs. State and ors.

18) S.B. CIVIL WRIT PETITION NO.7396/07
M/s.Pink City Traders Vs. State and ors.

19) S.B. CIVIL WRIT PETITION NO.7950/07
M/s.Chagan Lal Mool Chand & Co. Vs. State & ors.

20) S.B. CIVIL WRIT PETITION NO.7782/07
M/s.Mangal Trading Corporation Vs. State & ors.

21) S.B. CIVIL WRIT PETITION NO.6109/07
M/s.Mahalaxmi Enterprises Vs. State and ors.

22) S.B. CIVIL WRIT PETITION NO.6175/07
M/s.Dines Trading Company Vs. State and ors.

23) S.B. CIVIL WRIT PETITION NO.6048/07
M/s.Mohan Enterprises Vs. State and ors.

24) S.B. CIVIL WRIT PETITION NO.6282/07
M/s.Shri Laxmi Trading Company Vs. State & ors.

25) S.B. CIVIL WRIT PETITION NO.6285/07
M/s.M.K. Traders Chandpole Bazar Vs. State & ors.

26) S.B. CIVIL WRIT PETITION NO.8188/07
M/s.Roop Chand Ajay Kumar Vs. State and ors.

27) S.B. CIVIL WRIT PETITION NO.7295/07
Saboo Super Edi P.Ltd. Vs. State and ors.

28) S.B. CIVIL WRIT PETITION NO.7293/07
M/s.Hera Nand and Co. Vs. State and ors.

29) S.B. CIVIL WRIT PETITION NO.6738/07
M/s.Shakun Traders Vs. State and ors.

30) S.B. CIVIL WRIT PETITION NO.6736/07
M/s.Vaibhav Trading Company Vs. State and ors.

31) S.B. CIVIL WRIT PETITION NO.4746/07
Kamal Deconwania Vs. State and ors.

32) S.B. CIVIL WRIT PETITION NO.7726/07
Madan Lal Gupta Vs. State and ors.

33) S.B. CIVIL WRIT PETITION NO.6739/07
M/s.Suraj Agro Products Vs. State and ors.

34) S.B. CIVIL WRIT PETITION NO.6353/07
M/s.Jain Trading Company Vs. State and ors.

35) S.B. CIVIL WRIT PETITION NO.6737/07
M/s.Usha Enterprises Vs. State and ors.

36) S.B. CIVIL WRIT PETITION NO.6127/07
M/s.Vijay Shankar Trading Co. Vs. State and ors.

37) S.B. CIVIL WRIT PETITION NO.7406/07
M/s.Girraj Trading Co. Vs. State and ors.

38) S.B. CIVIL WRIT PETITION NO.6278/07
M/s.Shreenath Trading Co. Vs. State and ors.

39) S.B. CIVIL WRIT PETITION NO.9346/07
M/s.Jhandewala Food (P) Ltd. Vs. State and ors.

40) S.B. CIVIL WRIT PETITION NO.9568/07
M/s.Gripwell Industries Vs. State and ors.

41) S.B. CIVIL WRIT PETITION NO.9567/07
M/s.Ashoka Oil Industries Vs. State and ors.

42) S.B. CIVIL WRIT PETITION NO.9566/07
M/s.Hansraj Traders Vs. State and ors.

43) S.B. CIVIL WRIT PETITION NO.9565/07
M/s.Nand Kishore Sushil Kumar Vs. State and ors.

44) S.B. CIVIL WRIT PETITION NO.9564/07
M/s.Shyam Sunder Ramavtar and Co. Vs. State & ors.

45) S.B. CIVIL WRIT PETITION NO.8819/07
M/s.Prakash Enterprises Vs. State and ors.

46) S.B. CIVIL WRIT PETITION NO.8818/07
M/s.Keshav Agro Products Vs. State and ors.

47) S.B. CIVIL WRIT PETITION NO.8817/07
M/s.Madan Lal Roop Narayan Vs. State and ors.

48) S.B. CIVIL WRIT PETITION NO.7195/07
M/s.Mitesh Trading Co. Vs. State and ors.

49) S.B. CIVIL WRIT PETITION NO.7194/07
M/s.Bansal Trading Corporation Vs. State & ors.

50) S.B. CIVIL WRIT PETITION NO.9264/07
M/s.Pawan Enterprises Vs. State and ors.

51) S.B. CIVIL WRIT PETITION NO.7193/07
M/s.Shiv Shankar Sales Corpn. Vs. State & ors.

Date of Order : 11 December, 2007.

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Shri Ajay Gupta)
Shri Ajay Kumar Bajpai)
Shri Babulal Gupta)
Shri Suresh Pareek) for the petitioners.

Shri B.K. Sharma, Deputy Govt.Advocate for State.
Shri Inderjeet Singh for the respondents.

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BY THE COURT:

All the aforesaid writ petitions raise common questions of law and fact therefore, they are being disposed of by this common order, though, based on the facts stated in SBCWP No.8100/2007 (M/s.Dhan Laxmi Enterprises Pvt. Vs. State of Raj. and ors.).

2) The petitioners are A-Class traders/license holders under the Rajasthan Agriculture Produce Market Act, 1961 (for short, the “Act of 1961“). It is claimed that they are carrying out the business of agriculture produce for last so many years at various places in the Jaipur City and

making payment of Mandi Tax as per the provisions of the Act of 1961. They being license under the aforesaid Act, are entitled to allotment of shop in the main market yard notified by the government. The government prepared a scheme to establish the main market yard in village Kukarkhera on Sikar Road and issued notification dated 31/7/1987 under Section 4 of the Land Acquisition Act, 1894 for acquiring the land for the purpose. The government then by subsequent notification dated 29/6/1988 laid down the guidelines and the manner in which the merit list for allotment of such shops shall be made. The said notification was partly modified by the subsequent circulars dated 22/5/1989 and 31/12/2001. It was thereafter that the government issued a further order on 27/6/1995 whereby traders of Surajpole Mandi Yard were asked to shift their business to the said premises on or before 30/7/1999 on permanent basis by making payment of allotment fee upto 1/7/1995 at one go and in case if they failed to do so after 30/7/1995, the

allotment shall be cancelled.

3) The government thereafter issued notification on 19/12/2001 whereby applications were invited from A-Class Traders/Licensed holders doing business in Chandpole Mandi Yard for allotment of shops in Kukarkhera Mandi Yard. Allotment list was prepared on the basis of the criteria and guidelines notified in the circular referred to above. The List of allotment was prepared on 8/9/2004. Aggrieved by the non allotment of the shops/place of shops, some of the traders approached this Court by filing number of writ petitions. A co-ordinate Bench of this Court by common judgment passed in 30 writ petitions directed that priority be given to the license holders who are actually trading in Chandpole Mandi Yard area and thereafter, the case of those license holders who were doing their business from outside the Chandpole Mandi Yard area such as Sodala, Lal Kothi and Surajpole should also be considered. Aforesaid judgment of the learned Single Bench was challenged before the Division

Bench and the Division Bench vide judgment dated 19/3/2007 passed in D.B. Civil Special Appeal (W) No.424/2005 (Anaz Mandi Chandpole Vyapar Vs. State of Rajasthan & Ors.) and as many as 27 connected special appeals, dealt with the different categories of the traders separately. Regarding those who were trading in non notified agriculture produce, learned Single Judge directed that since they are doing the business from Chandpole Mandi Yard area who were mostly the traders dealing in Ata, Maida, Sui, Bardana etc., they are eligible for allotment of shops but priority in the matter of allotment of the shops should be given to the traders who are doing their business in the notified agriculture produce area and after their claims should be considered against the left over shops after making allotment of the shops to the traders of the Chandpole Mandi Yard being their business in the notified area. Second category was of those who were though trading in notified goods but did not possess license or whose licenses were not renewed. Their writ petitions were

dismissed. Third category was of those license holders who were doing their business from outside Chandpole Mandi Yard. It was held that their cases shall also be considered against left over shops after the cases of those traders in the Chandpole Mandi Yard area are considered. The learned Single Judge however rejected the challenge made to the validity of the criteria/guidelines for allotment on merits.

4) The judgment of the learned single Bench was challenged before the Division Bench. While reiterating in substance the directions of the learned Single Bench, the Division Bench clarified in regard to those trading in non-notified goods and held that question of allotment of shops to such traders would arise only after the process of allotment of shops to traders doing business in notified agricultural produce is complete and all of them have been allotted shops. The Division Bench however upheld the judgment of the learned Single Bench to the extent of dismissal of writ petitions filed by those who did not have license or whose

license were not renewed and also of all those who challenged the criteria and guidelines for preparation of the merit for allotment of the shops. It is in this scenario that the present writ petitions have been filed by different parties who did not earlier avail of the remedy of filing writ petition.

5) I have heard Shri Ajay Gupta, Shri Ajay Kumar Bajpai, Shri Babulal Gupta and Shri Suresh Pareek, learned counsel for the petitioners, Shri Inderjeet Singh, learned counsel for the respondents and Shri B.K. Sharma, learned Deputy Government Advocate for the State and have perused the material available on record.

6) Shri Ajay Gupta, learned counsel for the petitioners argued that all the petitioners are required to be treated alike since all such traders are regularly paying the mandi tax. Even when the original notification was issued for setting up Kukarkhera Mandi Yard on 31/7/1986, there was no stipulation therein that this yard was being set up only for those trading in

Chandpole Mandi Yard area. In the list of allotment that was finalized, some of the traders were not actually trading in the notified area and certain others who were already doing their business in Surajpole Mandi Yard have again been included. Shri Ajay Gupta, learned counsel for the petitioners further state that petitioners are also doing their business from Chandpole Anaj Mandi whereas certain others are doing their business from the place nearby that very market. Their case stand on better footing because their yearly turnover is better than those who are doing their business from the Mandi other than Chandpole Anaj Mandi. They are also paying more mandi tax than many traders of other Anaj Mandi areas who have been included in the allotment list. The respondents are arbitrarily including such traders whereas claim of better situated traders was illegally being ignored. It was argued that Chandpole Mandi Yard area has already been de-notified to be 'notified area' therefore the traders doing their business from that

mandi area are entitled for allotment of shops in Kukarkhera Mandi Yard. It was argued that for trading in a yeard, a licence is not required to such shops and trader can trade from an open place in Chandpole Mandi Yard. Their claim for allotment of the shop therefore cannot be treated less favourably as compared to those having shops. Section 15C (2) of the Act of 1961 does not make any distinction between traders of one category even if they are actually doing their business from other yards. Section 15C(2) provides that agricultural produce as may be purchased by a trader from outside market area or in the market area from another trader may be brought or sold in the market area in accordance with the provisions of the bye-laws. There is therefore no restriction for any of the petitioners to buy agricultural produce from one market area and to take it for sale in another. It was argued that even a broker can purchase and sell for that purpose license is issued to them to trade. The case of the petitioners therefore should

be considered. It was therefore prayed that the writ petition be allowed.

7) Shri Suresh Pareek, learned counsel for petitioners in some of the matters i.e. SBCWP Nos.6285/2006 & 6127/2007 argued that these petitioners are license traders and are running business from Chandpole Mandi Yard area. The case of the petitioners is covered by the judgment of the Division Bench of this Court because they are license traders in Category-A of Chandpole Mandi Yard itself. It was argued that in about 30 writ petitions that were pending, direction was issued inter-alia for reserving one shop each but ultimately when the writ petitions were dismissed, that direction stood merged in the final judgment dated 11/4/2005 and thereafter in the judgment of the Division Bench dated 19/12/2007. Case of the petitioners should be considered for allotment against such shops. It was therefore prayed that the writ petitions be allowed.

8) Shri Babulal Gupta, learned counsel for the petitioners appearing in SBCWP

Nos.6282/07 and 5905/2007 while citing the judgment of the Supreme Court in **Kewal Krishan Vs. State of Punjab : AIR 1980 SC 1008** argued that his clients were license holders of traders Category-A in Chandpole Mandi Yard and they are trading in that yard and their business is now required to be shifted from Chandpole Mandi Yard to Kukarkhera Mandi Yard area. However, allotment of a shop/place of shop has not been made to them so far by the respondents. Therefore, they find it difficult to trade in the notified area. He further argued that without making alternate arrangement for a shop/place of shop in that yard, complete ban could not be imposed on trading from Chandpole Mandi Yard.

9) Shri A.K. Bajpai, learned counsel appearing for petitioners in SBCWP No.6271/07 also submitted that petitioners are registered traders and have applied for allotment of shops in Kukarkhera Mandi Yard. Respondents have not allotted them shops in that mandi yard while similarly situated traders have been considered for allotment

of place of shops in Kukarkhera Mandi Yard. It was therefore prayed that writ petition be allowed and the respondents be directed to make allotment of shops to the petitioners.

10) Shri Inderjeet Singh, learned counsel appearing for the respondents opposed the writ petitions and argued that issues involved have already been resolved by the Division Bench of this Court in its judgment dated 19/3/2007 and, therefore, the controversy is no longer *res integra.* As provided in Section 2(1)(iii) of the Act of 1961, a broker means an agent whose ordinary course of business is to negotiate and make contracts on payment of commission for the purchase or sale of agriculture produce on behalf of his principle and includes commission agent but does not include the servant of the principle whether engaged in negotiating or making such contracts. Only a broker can negotiate the price with the farmer who comes in the mandi yard for selling of his agriculture produce. In other words, a person who is having the licence of

broker can deal with the farmer in the Krishi Upaj Mandi yard. He further invited the attention of the court towards the provisions of Section 2(1)(xx) which defines the “trader”, according to which the trader means, a person ordinarily engaged in the business of buying and selling of agriculture produce on his own behalf but does not include a broker. By citing these definitions, Shri Inderjeet Singh, learned counsel for the respondents argued that while a person who is having the licence of trader's category can purchase agriculture produce from another trader or from broker in the Krishi Upaj Mandi yard but he cannot purchase agriculture produce from the farmer in the mandi yard. It was further argued that a person who is having the license of trader category can do his business of agriculture produce anywhere in the market area. The market area for Krishi Upaj Mandi, Jaipur, is in the municipal limits of Jaipur Nagar Nigam which also includes area of 8 Panchayat Samitis of Jaipur District. Therefore, by de-notifying the Krishi Upaj

Mandi sub-yard Chandpole, the business of petitioners is not going to be affected in any manner.

11) Shri Inderjeet Singh, learned counsel for the respondents further relying on the provisions of Section 15C(2) of the Act of 1961 argued that agriculture produce may be purchased by a trader from outside the mandi area or may be brought or sold in the market yard by another trader in accordance with the provisions of bye-laws. There is therefore no restriction restraining the petitioners to trade only in Chandpole Mandi yard and not elsewhere. It was argued that allotment of shops in Kukarkhera Mandi Yard was proposed to be made only with a view to shifting complete trade from Chandpole Krishi Upaj Mandi sub-yard. It was thus that allotments of the plots at Kukarkhera was in first instance proposed to existing licence holders of Chandpole sub-yard. Applications were invited from the said licence holders/traders vide advertisement dated 19/12/2001. Last date for submission was

31/12/2001. In the advertisement, preference was given to the licence holders of Chandpole Krishi Upaj Mandi yard. Inspite of the fact that applications were invited, none of the petitioners applied in response to the aforesaid advertisement. Mere eligibility to apply therefore does not entitle the petitioners to now claim allotment if they did not apply in time. The writ petitions which have been filed with enormous delay in the year 2007 in respect of advertisement which was issued way back on 19/12/2001, are liable to be may be dismissed for delay and latches, particularly when allotment committee made the allotments according to the merit prepared by them by completing the process on 27/12/2004. It was argued that while in the first phase of allotment, there were about 308 plots out of which 223 plots have already been allotted to the licence holders and for remaining 85 plots, allotment of said plots is being processed under the directions of the Hon'ble Division Bench of this Court and now no more plots remained

available to be allotted to the petitioners in the first phase. Shri Inderjeet Singh, learned counsel for the respondents further argued that if the request for allotment is accepted even at this belated stage, then also, there were 2000 firms which are having the license of trader's category who are doing business in the city of Jaipur in the mandi area and, therefore, they are also similarly situated traders. In regard to SBCWP Nos.4746/2007 & 7702/2007, Shri Inderjeet Singh, learned counsel for the respondents argued that license of the petitioners in these cases were cancelled and was not renewed. The order cancelling license is appealable. They are free to file an appeal. This category of writ petition was earlier dismissed by the learned Single Bench of this Court under his judgment dated 11/4/2007 and decision of the learned Single Judge to that extent was upheld by the Division Bench. In regard to SBCWP Nos.7782/2007, 6282/2007 and 6739/2007, learned counsel for the respondents argued that Mangal Trading Corporation has obtained

licence whereas petitioners in SBCWP Nos. 6282/2007 and 6739/2007 are licensee of the year 2006 and, therefore, their case cannot said to be considered because they do not have any license at the time when the writ petitions were filed.

12) I have considered the rival arguments of the learned counsel for the parties and perused the material forming part of the record.

13) The issues that are involved in this set of writ petition have indeed already been adjudicated upon and resolved earlier by the Division Bench of this passed in first batch of petitions vide judgment dated 11/4/2007 which was upheld by the Division Bench. In substance, direction of the learned Single Bench has been upheld by the Division Bench with certain modifications which may be summarized as follows:-

(i) Priority in the matter of allotment of shops shall be given to the licensees of Chandpole Mandi Yard and the case of licensees from other

sub-yards shall be considered for allotment against left over shops.

(ii) Such of the petitioners who do not possess license or whose licenses have been cancelled/nor renewed, shall not be considered for allotment of shops in Kukarkhera Mandi Yard.

(iii) Challenge to the validity of criteria and determination of merit as per the guidelines provided would stand rejected. Thus, it was concluded that allotment shall be made as per the aforesaid criteria/guidelines.

(iv) The cases of those who were trading in non-notified area would also be considered after the allotment of shops have been made to those trading in notified community subject to determination by the market committee whether or not traders in particular should be allotted shops in the mandi yard.

14) Learned counsel for the respondents have raised plea of delay and latches. It is

evident that the notification inviting applications was published on 19/12/2001 which was finalized on 27/12/2004 and writ petitions in all these matters have been filed in the year 2007. It is further noticed that though process was started in the last month of year 2001, it was not finalized till the end of 2004. Most of the writ petitions in the earlier batch were filed in the year 2004 itself. Learned counsel for the respondents could not conclusively contest the position that some of the petitioners in the earlier batch of writ petitions had earlier also applied in response to the advertisement dated 19/12/2001. Their cases even uptill the time of finalization of allotment could not therefore be considered distinguishable from those who have later approached this court. In other words, they have also approached this court subsequent to finalization of the process of allotment like the petitioners have done. Though, the learned counsel for the petitioners have argued that they are only claiming parity with other licensees ho

were not trading in Chandpole Mandi yard and not applied for allotment of shops in Kukarkhera Mandi Yard. The writ petitions were filed in the year 2004 earlier because the process of allotment was finalized by the respondents in the end of the year 2004. So far as delay of first three years is concerned, the same should not be an impediment for consideration of the case of the petitioners in earlier batch of writ petitions. The petitioners, even if they have not approached this court, cannot be non-suited only because certain right has come to accrue to similarly situated traders on account of the judgment passed by this Court on 11/4/207 which has been approved by the Hon'ble Division Bench of the Court recently on 19/3/2007. Their writ petitions cannot be dismissed solely on the ground of delay and latches particularly when the respondents themselves have submitted that out of 300 plots, allotment of 223 plots has been finalized whereas remaining 85 plots are yet to be allotted as per the directions of the Division Bench of this Court. At the

same time however, the field cannot be left wide open even for those who did not have license even upto the time when the allotment was finalized on 27/12/2004 and subsequently acquired license only with a view to securing allotment of shops in Kukarkhera Mandi Yard or otherwise.

15) In view of aforesaid discussion therefore, SBCWP Nos.4746/2007 and 7726/2007 in which the petitioners do not have license upto the time of finalization of allotment of shops and SBCWP Nos.6282/2007 and 6739/2007 in which, the petitioners obtained licence in the year 2006 only are dismissed. The other writ petitions are disposed of holding that the aforesaid directions contained in para 13 of this judgment which have been culled out from the judgment of the Division Bench shall be *mutandis mutandi* applied in the case of petitioners herein. Petitioners would however be required to satisfy the respondents by producing their license and other records so as to fulfill the conditions as enumerated above. Such of the petitioners who did not have valid

licence or whose license has been cancelled/not renewed as on 27/12/2004 when the process of allotment of shops was finalized, would not be entitled to consideration for allotment of shops at Kukarkhera Mandi Yard.

All the aforementioned writ petitions are accordingly disposed of with no order as to costs.

(MOHAMMAD RAFIQ), J.

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